

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

RICHARD VELA, SR. and
RICHARD VELA, JR,

Plaintiffs,

v.

Civ. No. 23-430 KWR/GJF

CARLSBAD MEDICAL CENTER, LLC,
PECOS VALLEY OF NEW MEXICO, LLC
d/b/a PECOS VALLEY PHYSICIAN GROUP,
and CHSPSC, LLC d/b/a COMMUNITY
HEALTH SYSTEMS,

Defendants.

ORDER FOLLOWING MAY 29, 2024 STATUS CONFERENCE

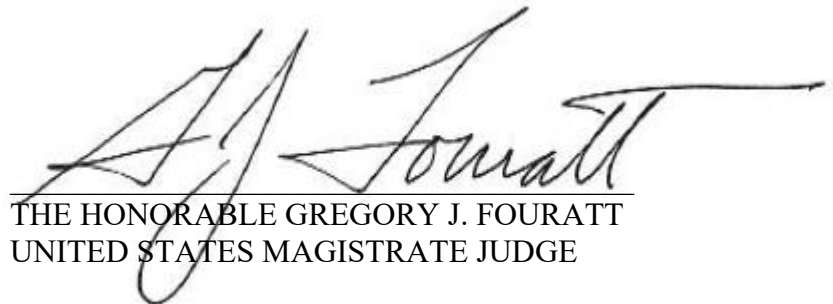
THIS MATTER is before the Court pursuant to the parties' request at the May 29, 2024 telephonic status conference for informal resolution of a discovery dispute concerning the deposition fee to be paid by Defendant Carlsbad Medical Center to Dr. Gilbert Martinez, Plaintiffs' retained neuropsychologist, for a deposition noticed by Defendant Carlsbad Medical Center for July 11, 2024, at 1:00 p.m. After hearing the arguments of counsel and instructing counsel to submit to chambers the fee schedule at issue, the Court took the matter under advisement. *See* ECF 76.

Following its review of the applicable fee schedule, the Court concludes that Defendant Carlsbad Medical Center need not pay Dr. Martinez any additional deposition fee in advance of the July 11, 2024 deposition beyond the \$2,200 previously paid. Although the fee schedule references a "retainer for deposition in San Antonio" in the amount of "\$5250 per day minimum," the Court concludes that Defendant Carlsbad Medical Center need not pay a "retainer" for an expert they have not retained. The terms of the retainer govern the contractual relationship between

Plaintiffs and their expert, but do not dictate the expense to be paid by Plaintiffs' litigation adversary.

Instead, Defendant Carlsbad Medical Center must pay Dr. Martinez at the rate designated on the fee schedule for depositions: \$550 per hour. The "Billing Policies" portion of the fee schedule provides an additional requirement: that a "pre-payment fee is due prior to the initiation of all services, to be determined based on the extent of anticipated services." Defendant Carlsbad Medical Center having estimated that Dr. Martinez's deposition will last approximately four hours, it is responsible for pre-payment of \$2,200—an amount counsel represents it has already paid. No additional payment is necessary in advance of the July 11, 2024 deposition and that deposition shall go forward as scheduled.

SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE